IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/07/2002

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

W.P.NO.15911 OF 1995

M. Santhanakrishnan .. Petitioner

Vs.

1. The State of Tamil Nadu,
rep. by its Secretary to Govt.
MA & WS Department,
Madras 600 009.

2. The Commissioner,
Corporation of Madras,
Ripon Buildings,
Madras 600 003.

3. Thiru M. Abdulla Sha
Deputy Commissioner (GA & P),
Enquiry Officer, Corporation
of Madras, Madras 3. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari as stated therein.

For Petitioner : Mr.P.L. Narayanan

For Respondent-1 : Mrs.N.G. Kalaiselvi
Special Government Pleader

For Respondent-2 : Mr.C. Ravichandran

:J U D G M E N T

The facts giving rise to the present writ application are as follows : -

The petitioner was promoted and appointed as Revenue Officer, Corporation of Madras, with effect from 1.6.1990. The petitioner issued a notice on 31.1.1992, seeking voluntary retirement from service with effect from 1.5.1992. The petitioner was informed on 18.3.1992 that three months

notice period would expire on 1.6.1992. The petitioner thereafter ceased to attend office with effect from 2.6.1992. Since terminal benefits of the petitioner had not been given, the petitioner filed a writ petition seeking for a suitable direction for settlement of the terminal benefits which was dismissed by the learned single Judge. In Writ Appeal No.1194 of 1992 filed against the said order, the Division Bench by order dated 7.9.1993 permitted the petitioner to retire and gave a direction that the pensionary benefits should be settled on or before 20.9.1993. On 20.9.1993 when the matter was taken up, an order dated 20.9.1993 was produced before this Court on behalf of the Municipal Administration. Said order reads as follows :-

" Thiru M. Santhanakrishnan, Revenue Officer, Corporation of Madras is permitted to retire from service on the afternoon of 30.11.1992 on attaining the age of superannuation.

2. The Government also direct that the period of absence of the Officer from duty from 2.6.1992 to 30.11.1992 shall be treated as leave on loss of pay."

The Division Bench observed that even though the petitioner had been allowed to retire, the other portion of the direction relating to settlement of pension and terminal benefits had not been complied with. The Division Bench proceeded to observe as follows : -

" . . . However, the other portion of the direction relating to settlement of pension and terminal benefits has not been complied with. Attempt was made on the part of the Corporation to show that it could not be done due to certain irregularities noticed in the assessment of property taxes relating to certain hotels as stated in U.O. Note bearing R.D.C.No.G1/8352/93, pursuant to Lr.No.24279/E3/93 M.A. & W.S. Dept. dated 7.9.1993 and U.O. Note G.D.C.No.E2/10710/92 dated 14.9.1 993, it may be pointe out that the U.O. note in question has come into existence after we have passed our order. If at all, the appellant was responsible for any irregularity noted in the U.O. referred to above, it was open to the Corporation to make oa submission before us when we passed the order on 7.9.1993, but the Corporation did not choose to make any statement because at that time it had not even thought of such a thing. It is only after we passed the order, the Corporation appears to have dug into the past of the appellant, which cannot be permitted once we have passed the order dated 7.9.1993. It is stated that it is due to this U.O. note, the pensionary benefits could not be settled. In view of what is stated above, we direct that our order dated 7.9.1993 shall be complied with on or before 8.10.1993 and such compliance shall be reported on 11.10.1993 before this Court.

We make it clear that this order will not in any way affect the authorities of the Corporation to proceed in accordance with law regarding the assessment of taxes of the properties as mentioned in the aforesaid U.O. notes and it shall also not affect the defence of the owners of those properties. (Emphasis added by me).

After the aforesaid order was passed, the respondents complied with the direction and paid the terminal benefits. Subsequently, however, the respondents served a charge-memo dated 6.12.1994 on the petitioner containing several allegations. Thereafter, the respondents appointed an Enquiry Officer. Prayer has been made in the present writ petition to quash the charge-memo dated 6.12.1994 and to quash other consequential orders.

2. It has been contended on behalf of the petitioner that the proceeding against the petitioner could not have been initiated after the period of limitation and, at any rate, in view of the direction contained in the decision of the Division Bench in Writ Appeal No.1194 of 1992, such charge-memo could not have been framed as the very same matter has been raised before the Division Bench.

3. Counter affidavit has been filed on behalf of the respondents refuting the contentions raised by the petitioner.

4. It is not disputed that the case of the petitioner would be governed by the provisions contained in the Madras Corporation (Superior) Service Pension Rules, 1970 (hereinafter called the " Rules "). Rule-7 of the Rules being relevant is extracted hereunder : -

" 7. Recovery from pension.-- (1) The Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from pension of the whole part of any pecuniary loss caused to the Corporation if the pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct or to have caused pecuniary loss to the Corporation by mis conduct or negligence during his service including service rendered on reemployment after retirement:

Provided that --

(a) such departmental proceedings, if not instituted while the petitioner was in service whether before his retirement or during his reemployment, shall after the final retirement of the officer be deemed to be a proceeding under this rule and shall be concluded by the authority by which it was commenced in the same manner as if the officer had continued in service.

(b) such departmental proceeding if not instituted while the officer was in service, whether before his retirement or during his reemployment --

(i) shall not be instituted save with the sanction of the Government;
(ii) shall not be in respect of an event which took place more than four years before such institutions; and
(iii) shall be conducted by such authority and in such place or places as the Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service may be made in relation to the officer during his service; and

(c) no such judicial proceedings if not instituted while the pensioner was in

service whether before his retirement or during his reemployment shall be instituted in respect of a cause of action which arose on an event which took place more than four years before such institution."

Basing upon the aforesaid Rule, one of the contentions raised by the petitioner relates to question of limitation. It has been submitted that in view of the provision contained in Rule 7(1), proviso (b)(ii), no such proceeding could be initiated in resp ect of an event which took place more than four years prior to such institution of the proceeding. A perusal of the charge-memo dated 6.12.1994 indicates that the allegations relate to action of the petitioner within the period of four years and not beyond the period of four years and as such the contention to the effect that the proceeding is barred by limitation is not acceptable.

5. Learned counsel for the petitioner has also submitted that as per the provision contained in Rule 7(1) proviso (b), no such proceeding should be instituted save with the sanction of the Government. He has contended that there is no material on record to indicate that the Government had sanctioned the initiation of the proceeding. In the present case, the charge-memo is signed by the Secretary to the Government. However, it does not purport to have been issued on behalf of the Government, nor there is any other material on record to indicate that sanction has been obtained from the Government. Merely because the charge-memo has been signed by the Secretary to the Government, it cannot be assumed that sanction of the Government has been obtained. No materials have been produced to indicate that in accordance with the provisions contained in Article 166 of the Constitution, sanction of the Government had been obtained. The order itself does not appear to have been authenticated in the manner indicated in Article 166, nor does it purport to be an order of the Government. Therefore, the contention that the proceeding has been initiated without the sanction of the Government appears to be justified. Moreover, under the Rule, "sanction of the Government has to be obtained". The expression "sanction" signifies something more than mere signing of an order. It means that the appropriate authority after application of mind to the relevant circumstances passes an order sanctioning the initiation of the departmental proceeding. In the present case, in the absence of any materials on record, it cannot be assumed that the appropriate authority has "sanctioned" the initiation of the proceeding.

6. The contention of the petitioner to the effect that in view o the order passed by the Division Bench, the initiation of the subsequent proceeding is unjustified, is also worthy of acceptance. It is not disputed in the counter that the alleged irregularities indicated in the impugned charge-memo were brought to the notice of the Division Bench in the earlier case while justifying non-compliance with the direction regarding payment of pensionary benefits. In spite of the aforesaid, the Division Bench negatived the submission made on behalf of the present respondents, as apparent from the relevant portion of the order, which has been extracted earlier. The observation of the Division Bench to the effect, " . . . It is only after we passed the order, the Corporation appears to have dug into the past of the appellant, which cannot be permitted once we have passed the order dated 7.9.1993." makes it clear that the Division Bench disapproved of

the attempt made by the respondents to withhold the pensionary benefit on the ground of alleged irregularities which now form the basis of the charge-memo issued against the petitioner. The respondents did not challenge the legality of the order of the Division Bench and complied with the same subsequently. Therefore, it is not open to them to try to revive the very same question by initiating a further departmental proceeding.

7. The respondents in their counter have placed reliance upon the following observations of the Division Bench : -

" We make it clear that this order of ours will not in any way affect the authorities of the Corporation to proceed in accordance with law regarding the assessment of taxes of the properties as mentioned in the aforesaid U.O. notes and it shall also not affect the defence of the owners of those properties."

to contend that the observation of the Division Bench contemplated that such proceeding can be initiated. This submission of the respondents is thoroughly misconceived. The Division Bench was obviously considering the question of continuing the matter relating to assessment of taxes, which was a matter between the assessee and the Corporation. On the other hand, the observation makes it clear that the only matter which was left open was relating to question of

assessment as such and not regarding the right of the petitioner to receive full pensionary benefits. If the Division Bench wanted to give licence to the Corporation to initiate departmental proceeding as contemplated under Rule 7 of the Rules, nothing prevented the Division Bench from expressing such a reservation in the order itself.

8. Law is now well settled that even though provisions contained in section 11 of the Code of Civil Procedure relating to principle of res judicata is not applicable to the writ proceedings as such, the general principles relating to res judicata are applicable to these proceedings with the only possible exception relating to writ of habeaus corpus. The observation and the direction in the earlier Writ Appeal giving a direction to the respondents to pay the terminal and pensionary benefits would operate as res judicata between the parties, as any attempt by the respondents to withhold the pensionary benefit of the petitioner would fly in the face of the earlier order of the Division Bench which has remained unchallenged.

8. In above view of the matter, the writ petition is allowed and the charge-memo dated 6.12.1994 and the consequential orders are quashed. There will be no order as to costs.

19-07-2002

Index : Yes
Internet : Yes
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P.K. MISRA, J.

Judgment in W.P.15911/1995